BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
Request to Update Default Compensation Rate for	)	WC Docket No. 03-225
Dial-Around Calls from Payphones	)	RM No. 10568

RBOC PAYPHONE COALITION'S OPPOSITION TO PETITION FOR RECONSIDERATION

INTRODUCTION AND SUMMARY

The RBOC Payphone Coalition hereby files its opposition to the International Prepaid Communications Association, Inc.'s ("IPCA") petition for reconsideration of the Commission's order increasing the dial-around compensation rate for payphones.[1]

IPCA's petition is effectively limited to a single point: that the Commission should have "grandfathered" previously issued pre-paid cards, allowing providers to pay the prior \$.24 rate for dial-around calls made using such cards, rather than the \$.494 rate established in the Commission's recent rule-making. Its claim is without merit. IPCA's members have been on notice for two years that the per-call rate would likely increase; any prudent business would protect against such an easily foreseeable event. Moreover, IPCA provides no documentation for its central claim that its members will be unable to pass through the new dial-around rate to their customers, or that they will cause "confusion" or damage to their own "reputation" by doing so. In any event, IPCA provides no practical mechanism for distinguishing calls made with previously issued pre-paid cards from any other dial-around call. In the absence of any objectively verifiable mechanism for identifying such calls, IPCA's proposal is a non-starter.

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[1] *See* Report and Order, *Request to Update Default Compensation Rate for Dial-Around Calls from Payphones*, 19 FCC Rcd 15636 (2004) ("Report and Order").

IPCA's additional arguments provide no basis for relief. Even if the Commission excluded any pre-paid card providers from its estimate of small businesses affected by the rate increase – and it is not clear that it did – IPCA does not explain how that error was material. Finally, IPCA's passing argument that an increase in the per-call rate will have a negative impact on callers with limited means ignores the Commission's determination that a failure to establish a per-call rate that recovers a fair share of the payphone's costs would threaten payphone deployment to the detriment of all payphone users.

DISCUSSION

The Commission "may entertain a petition for reconsideration if it is based on new evidence or changed circumstances, or if reconsideration is in the public interest."[2] The Commission's rules specifically provide that a petition for reconsideration will be granted "only under the following circumstances":

> (1) The facts relied on relate to events which have occurred or circumstances which have changed since the last opportunity to present them to the Commission; (2) The facts relied on were unknown to petitioner until after his last opportunity to present them to the Commission, and he could not through the exercise of ordinary diligence have learned of the facts in question prior to such opportunity; or (3) The Commission determines that consideration of the facts relied on is required in the public interest.

47 C.F.R. § 1.429(b); *see also id.* § 1.106(b)(2), (3) (similar). IPCA's claims do not meet this standard. Its petition should therefore be denied.

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[2] Third Order on Reconsideration, *Redesignation of the 17.7-19.7 GHz Frequency Band, Blanket Licensing of Satellite Earth Stations in the 17.7-20.2 GHz and 27.5-30.0 GHz Frequency Bands, and the Allocation of Additional Spectrum in the 17.3-17.8 GHz and 24.75-25.25 GHz Frequency Bands for Broadcast Satellite-Service Use*, 19 FCC Rcd 10777, 10782, ¶ 13 (2004); *see also, e.g.,* Second Order on Reconsideration, *Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures*, 18 FCC Rcd 10180, 10212-13, ¶ 48 (2003) (same).

I. IPCA Fails To Justify "Grandfathering" Previously Issued Pre-Paid Cards

IPCA does not challenge the Commission's adoption of the $.494 rate, nor does it argue that the rate should not be applied to calls made using pre-paid cards issued after the effective date of the new rate. Instead, IPCA's principal claim is that the Commission should have "grandfathered" pre-existing phone cards by applying the prior dial-around compensation rate of $.24 to calls made using pre-paid cards issued prior to September 27, 2004. IPCA Petition at 3-6. Its arguments in support of grandfathering, however, are wrong as a matter of policy and unsupported by evidence.

First, IPCA and its members have had more than two years to prepare for the likelihood that the per-call rate might increase. APCC and the RBOC Coalition filed petitions for rulemaking in August and September 2002. On September 30, 2002, the Wireline Competition Bureau issued a notice seeking comment on the petitions, in which it "tentatively" concluded that it should retain the same economic methodology that this Commission had previously used – which would inevitably lead to a rate increase in light of declining call volumes.[3] IPCA itself filed comments on those petitions on December 12, 2002. The Commission issued its NPRM in October 2003, and IPCA participated in the resulting proceeding. Any prudent business would have taken steps to prepare for the rate increase that was widely anticipated in the industry – including altering the printing and packaging of its cards if necessary. If IPCA's members failed to do so, there is no reason that PSPs should bear the cost of that decision.[4]

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[3] *See* Public Notice, *Wireline Competition Bureau Seeks Comment on Petitions for Rulemaking Regarding Payphone Dial-Around Compensation Rate*, 17 FCC Rcd 18963 (2002).

[4] IPCA claims that seven states have capped the per-call surcharge on calling card calls made from payphones. *See* IPCA Petition at 3-4. But any such caps would affect all providers equally. If there is a basis for preemption of such rules, providers should seek it. This would provide no basis, however, for crafting any exception to the new rate.

Second, IPCA offers no evidence to support any suggestion that its members are unable to increase per-call charges to account for the increase in the PCC rate (if their members' current rates do not already cover their costs at the higher rate – itself an unsupported claim[5]). To the contrary, IPCA concedes that its members can change the rate that its members charge their customers by, for example, deducting extra minutes from the cards upon use at a payphone. *See, e.g.*, IPCA Petition at 4 (stating that a company may *choose* not to "change its DAC rate"); *id.* at 5 (stating that the Report and Order "may effectively force phonecard issuers to change their rates"); *id.* at 6 (noting that companies "will program [their] computers to charge a new DAC fee").

IPCA argues that if its members have to reprogram computers to "charge a new" rate, the new rate would possibly lead to "[c]onsumer [c]onfusion," or "imperil" the "good reputation of the phonecard issuer." *Id.* at 5-6. But this claim is itself unsupported: a card issuer can easily provide for an announcement to explain to its customers that rates for calls from payphones have increased – indeed, card issuers have already done so. Accordingly, there is no basis for the claim that an issuer's "good reputation" is somehow "imperil[led]" when it increases its charges to reflect an admittedly justified increase in regulated rates – particularly when all of its competitors will be subject to the same cost increase.[6]

Third, IPCA does not explain how PSPs will be able to distinguish between calls made using phone cards issued prior to September 2004 and any other dial-around call. Plainly, PSPs cannot be asked to rely on pre-paid card issuers' unverified representation on this score. Even if

[5] APCC argues that "currently issued cards commonly carry surcharges of $.65 - $.80, or roughly three times the old $.24 compensation rate." APCC Opposition to IPCA Motion for Stay at 4 n.3 (filed Oct. 12, 2004).

[6] Nor is there any basis for the claim that such an increase would be "deceptive" or risk other regulatory problems.

IPCA's arguments otherwise had some merit – and they do not – in the absence of any concrete, verifiable system for implementing IPCA's "grandfathering" proposal, that proposal must be rejected as impractical.

II. The IPCA Presents No Reason To Reconsider the Report and Order Merely Because of Alleged Discrepancies in the Commission's Analysis under the Regulatory Flexibility Act

Under the Regulatory Flexibility Act ("RFA"), this Commission is required to estimate the number of small businesses that might be impacted by the Report and Order. *See* 5 U.S.C. §§ 603(b)(3), 604(a)(3). In the section on RFA compliance, the Commission relied on its own statistical report[7] to estimate that its order would effect 37 "Prepaid Calling Card Providers." Report and Order, Appx. B, ¶ 20. But the Commission also noted that the rate increase might affect nearly 2,600 *other* small businesses. And, because many pre-paid card issuers may also be included as PSPs, OPSs, or IXCs in the Commission's report, there is no basis to conclude that the Commission erred in estimating the number of small businesses impacted by the rate increase.

Even if the Commission did underestimate the number of "Prepaid Calling Card Providers" affected by its ruling, IPCA makes no claim that any error made any difference to the Commission's conclusions. Such an immaterial error provides no basis for reconsideration of the Commission's establishment of the per-call rate.[8]

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[7] *See* Wireline Competition Bureau, Industry Analysis and Technology Division, *Trends in Telephone Service*, Table 5.3 (August 2003), *available at* http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/IAD/trend803.pdf.

[8] IPCA's claim that the Commission's RFA analysis should have taken into account distributors and retailers is unsupported – retailers and distributors do not have to pay per-call compensation, and are therefore not subject to the regulation in any relevant way.

III. IPCA's Challenge to the Commission's Policy Determination Is Unsupported and Incorrect

Finally, the IPCA makes a brief argument that the Report and Order will have an adverse impact on the "[p]oor, [d]isadvantaged, and [p]honeless." IPCA Petition at 8. It claims that poor people "will have every incentive to abandon payphones for alternatives," and that they will "reduce their use of telecom services." *Id.*

This analysis is completely unsupported by evidence. Moreover, the IPCA already made the same argument in its comments on the petitions for rulemaking.[9] This Commission correctly rejected the IPCA's claim, holding that an increased dial-around rate is essential *precisely* to aid "low-income customers, the elderly, and residents of rural areas" by encouraging payphone deployment (or discouraging payphone attrition). *See* Report and Order ¶ 20; *see also id.* ¶ 23 (quoting West Virginia Payphone Task Force's conclusion that "low-income citizens" rely "on payphones as a primary method of conducting business" as support for encouraging greater deployment by increasing the dial-around rate).

"It is well established that reconsideration will not be granted merely for the purpose of again debating matters on which the agency has once deliberated and spoken. The public interest in expeditious resolution of Commission proceedings is done a disservice if the Commission readdresses arguments and issues it has already considered." Memorandum Opinion and Order, *Policies Regarding Detrimental Effects of Proposed New Broadcasting Stations on Existing Stations*, 4 FCC Rcd 2276, 2277, ¶ 7 (1989). The IPCA presents no reason to disturb – nor does it even cite – this Commission's previous findings as to payphone deployment and its impact on

[9] *See* Comments of IPCA at 2-3, *Wireline Competition Bureau Solicitation of Comment on Petitions for Rulemaking Regarding Payphone Dial-Around Compensation Rate*, WC Docket No. 2-202 (filed Dec. 12, 2002).

poorer citizens. In the absence of any new evidence or argument, the Commission should reject IPCA's call to revisit a point that the Commission has already decided.

CONCLUSION

The IPCA presents no new evidence, no changed circumstances, and no reason to think that this Commission's holding was deficient. Its petition should be rejected.

Respectfully submitted,

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